

212308



October 21, 2004

Via UPS Next Day Air

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

FEE RECEIVED

OCT 22 2004

**SURFACE
TRANSPORTATION BOARD**

Re: Finance Docket No. 34601; Union Pacific Railroad Company -- Trackage Rights
Exemption -- The Burlington Northern and Santa Fe Railway Company

Dear Mr. Williams:

I am enclosing the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
2. A payment form in the amount of \$950.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

Very truly yours,

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

ENTERED
Office of Proceedings
OCT 22 2004
Public Room

FILED

OCT 22 2004

Robert T. Opal
General Commerce Counsel

**SURFACE
TRANSPORTATION BOARD**

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

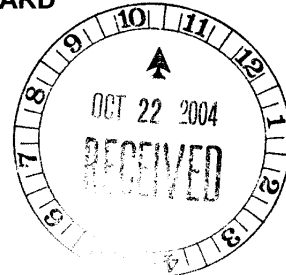
ORIGINAL

212308

CONTAINS COLOR IMAGES

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34601



UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

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TRANSPORTATION BOARD

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UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
STOP 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132 (FAX)

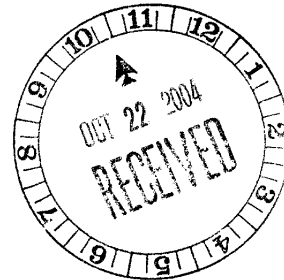
Dated: October 21, 2004
Filed: October 22, 2004

FILED

OCT 22 2004

SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34601

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of overhead trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway ("BNSF") between BNSF Milepost 0.0 (Tower 55) and BNSF Milepost 4.8 (New Connection) near Fort Worth TX, a distance of approximately 4.8 miles, as shown on the map attached hereto as Exhibit 1. The rights are to facilitate directional running by UP and BNSF in the Fort Worth area.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this

notice are covered by the written agreement attached as Exhibit 2, and are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

As required by 49 C.F.R. § 1180.4(i), UP provides the following information:

§ 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the acquisition of overhead trackage rights by UP over a line of railroad of BNSF between BNSF Milepost 0.0 (Tower 55) and BNSF Milepost 4.8 (New Connection) near Fort Worth TX, a distance of approximately 4.8 miles as shown on the map attached hereto as Exhibit 1.

§ 1180.6(a)(1)(I) Summary of the proposed transaction.

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(I) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicant is:

Union Pacific Railroad Company
1400 Douglas Street
STOP 1580
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
STOP 1580
Omaha, Nebraska 68179

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on October 29, 2004.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the trackage rights is to facilitate directional running by UP and BNSF in the Fort Worth area.

§ 1180.6(a)(5) States in which the Applicant Operates

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A draft of the trackage rights agreement containing the significant terms proposed is attached as Exhibit 2.¹

§ 1180.4(g)(I)(I) Labor Protection

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

¹ A copy of the executed agreement will be provided to the Board after it is finalized and executed.

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

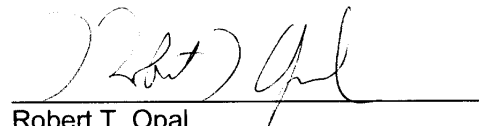
§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

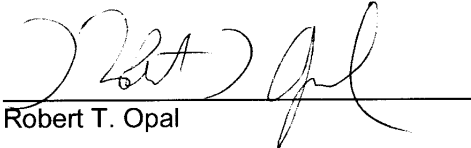


Robert T. Opal
General Commerce Counsel
1400 Douglas Street
STOP 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132 (FAX)

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption in Finance Docket No. 34601, knows the facts stated therein, and that said facts are true as stated.

Dated: October 21, 2004


Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by first class United States Mail:

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 21st day of October, 2004.

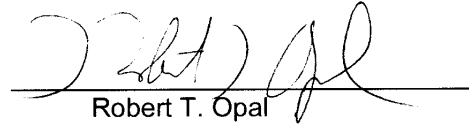
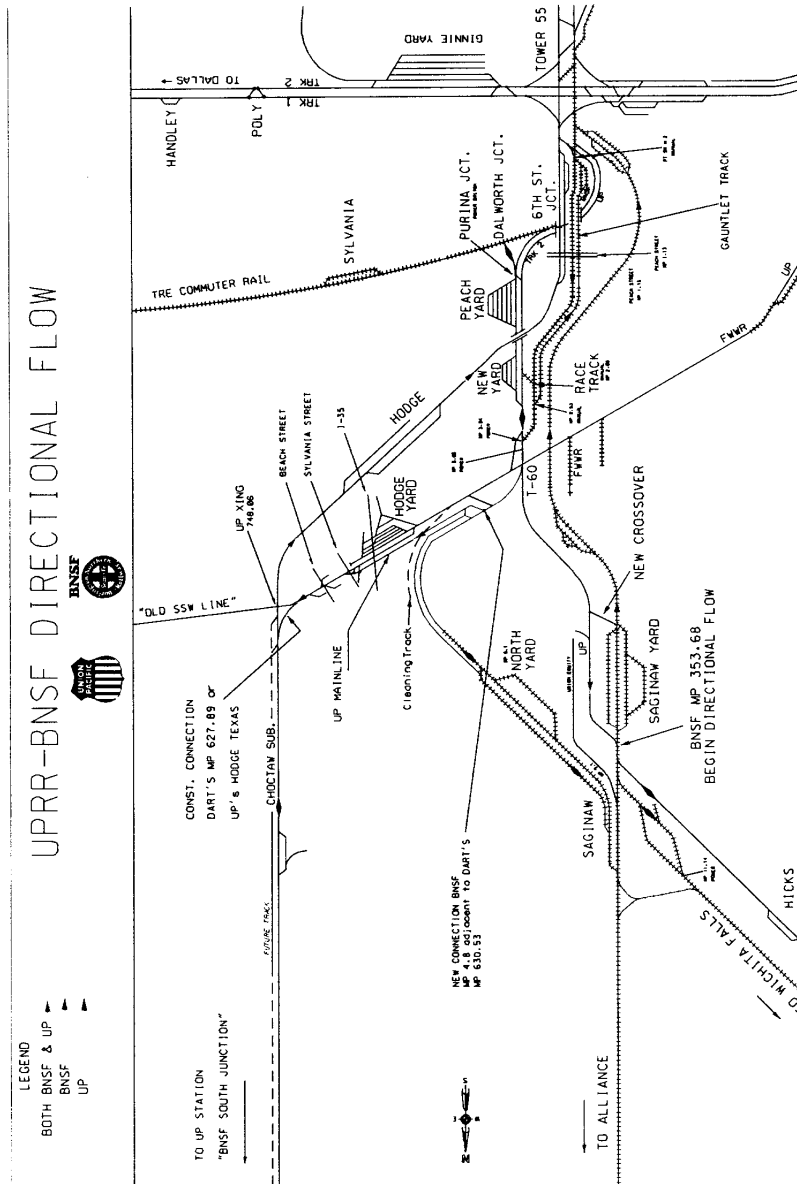

Robert T. Opal

EXHIBIT 1
(Finance Docket No. 34601)



Draft
**OVERHEAD TRACKAGE RIGHTS AGREEMENT
FORT WORTH, TEXAS
UP ON BNSF, TOWER 55 to NEW CONNECTION**

THIS AGREEMENT made as of this ____ day of _____ 2004, between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "Owner" or "BNSF"), and, **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter referred to as "User" or "Operator" or "UP").

WITNESSETH:

WHEREAS, BNSF owns a line of railroad consisting of track structure extending between Tower 55 in Fort Worth, Texas, in the vicinity of BNSF's Milepost 0.00, and New Connection in Fort Worth, Texas, in the vicinity of BNSF's Milepost 4.8 (BNSF's Wichita Falls Subdivision) as shown by bold dashed lines (from points "A" to "D") on the attached print dated August 20, 2004 (and identified as Exhibit "A") and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage;" and

WHEREAS, UP and BNSF desire to implement directional operations using the Joint Trackage in the Fort Worth, Texas area for movements of both parties' trains and engines (the "Directional Operations"); and

WHEREAS, UP and BNSF have entered into an agreement dated September 7, 2004 pursuant to which each party will grant to the other certain trackage rights and make certain improvements in the Fort Worth Area (the "Fort Worth Directional Running Agreement", or "FWDRA"); and

WHEREAS, UP and BNSF wish to more specifically define the terms and conditions under which said trackage rights shall be exercised and such improvements shall be implemented.

NOW, THEREFORE, it is mutually agreed by and between the parties:

Section 1. General Conditions; Conflicts Between Provisions

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. Each capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

This Agreement is entered into to implement certain provisions of the Fort Worth Directional Running Agreement. If any conflict between this Agreement (including its General Conditions) and the FWDRA shall arise, the provisions of this Agreement shall prevail.

All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

Section 2. UP's Rights:

(a) Subject to the terms and conditions contained herein, BNSF grants to UP the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in UP's account over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered BNSF for the purposes of this Agreement, it being understood and agreed that UP shall not have the right to:

- (i) Switch industries or transload upon the Joint Trackage; or
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.12, 2.13 and 2.14 of Exhibit B; or
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage; or
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or
- (v) Connect with itself or any other railroad at any location along the Joint Trackage; or
- (vi) Build-in to or build-out from any point on or along the Joint Trackage; or

(viii) Interchange with any other railroad along the Joint Trackage.

(b) The rights granted in Section 2 (a), above, shall be for rail traffic of all kinds and commodities, both carload and intermodal.

Section 3. Connections and Other Capacity Projects:

(a) Notwithstanding Section 2 (a) (v), above:

- (i) at Tower 60, Texas, BNSF will re-configure the Interlocking plant (at UP's sole cost and expense) to allow UP dispatching personnel to line a route through the Wichita Falls (north-south) route. Route can only be lined when the east/west route (FWWR/ DART) is not lined or occupied. UP cannot employ software or any mechanism to "fleet" or stack trains through the interlocker. BNSF grants UP permission to construct (or have constructed by BNSF) and maintain a separate signal cabin to house hardware required to interface with BNSF's interlocking controls; and
- (ii) UP will install centralized traffic control ("CTC") on the Joint Trackage at UP's sole cost and expense;

provided, however, that each such project shall be subject to written approval by BNSF of UP's proposed engineering design, which approval shall not be unreasonably withheld.

Section 4. Maintenance and Dispatching:

(a) BNSF grants UP the right to maintain the Joint Trackage, including the right to charge BNSF compensation for BNSF's use of the Joint Trackage. Maintenance of the Joint Trackage includes (but is not limited to) maintenance of rail, ties, ballast, highway and street crossing surfaces, roadbed, signals and highway crossing protection, bridges, culverts and other drainage structures, and roadway signs. UP will provide such services as vegetation control, government mandated inspections, track geometry testing, rail integrity testing, rail grinding, and other services required to keep the Joint Trackage in proper operating condition.

(b) BNSF grants UP the right to dispatch the Joint Trackage in accordance with the standards outlined in the Dispatching Protocol adopted as an exhibit to the Restated and Amended BNSF Settlement Agreement between the parties in Finance Docket No. 32760, jointly submitted to the Surface Transportation Board on March 1, 2002 (the "Settlement Agreement"), as such Dispatching Protocol may be amended from time to

time. Either party may place a Service Exception on the Senior Management's Quarterly Service Review Agenda.

Section 5. GTM Rates:

(a) In addition to other payments to be made under this Agreement, BNSF shall remit to UP for the use of the Joint Trackage in the operation of its Equipment there along and there over, the total amount of those sums computed pursuant to Section 9(a) of the Settlement Agreement, adjusted as provided in the joint filing submitted by UP and BNSF to the United States Surface Transportation Board on December 11, 2002, which sums per GTM ("GTM Rates") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes:

- (i) 2.9 mills per GTM for all Equipment, except as provided in Subsection (a)(ii) of this Section 5.
- (ii) 2.8 mills per GTM for unit trains (trains consisting entirely of sixty-seven (67) or more rail cars of bulk freight of a single commodity, except for intermodal shipments, unless of a single commodity), loaded or empty.

(b) For the purpose of computing the GTMs under this Section 5, it is mutually agreed that the distance between the designated points of the Joint Trackage is 4.9 miles.

(c) The GTM Rates set forth in Section 5 (a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 2005, as follows:

The GTM Rates shall be adjusted upward or downward effective July 1 of each year during the term of this Agreement by the difference in the two (2) preceding years in BNSF's system average URCS costs for the categories of maintenance and operating costs covered by the GTM Rates. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

Upon every fifth anniversary of the effective date of this Agreement ("Anniversary Date"), either party may request, on ninety (90) days' written notice, that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 6 of the General Conditions. It is the intention of the parties that rates and charges for trackage rights and services granted under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

Section 6. Additions:

Expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, CTC, grade separations, and future connections, shall be handled as follows: Any Changes in and/or Additions to the Joint Trackage shall be shared by UP and BNSF on the basis that the parties' respective GTMs operated over the Joint Trackage bear to total GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to BNSF for purposes of computing respective GTMs for purposes of this Section 6.

Section 7. Abandonment; Government Approval

(a) Pursuant to all of the provisions of Section 7.3 of the General Conditions, BNSF, to the extent that it may lawfully do so, reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of UP, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to UP of its intention so to do.

Section 8. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

Executive Vice President-Operation
MS 1180
1400 Douglas Street
Omaha, Nebraska 68179

With a copy to:

General Manager Joint Facilities
MS 1180
1400 Douglas Street
Omaha, Nebraska 68179

If intended for BNSF:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

AVP Contracts and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 9.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

By: _____
Its: General Manager Joint Facilities

By: _____
Its: _____

EXHIBIT "A"

Exhibits A to the trackage rights agreement will be filed with the final, executed copy of the agreement.

Draft

EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated October, 2004, to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.6 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.7 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.8 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.9 "Mill" shall mean one-tenth of a cent (\$0.001 US).

1.10 "Owner" shall have the meaning given to it in the Agreement.

1.11 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.12 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.13 "User" shall have the meaning given to it in the Agreement.

1.14 "Operator" shall mean the party designated to maintain and dispatch the Joint Trackage.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Operator shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Operator, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Operator, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Operator shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that Owner desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Operator agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by Owner. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Operator in such improved condition.

2.3 Operator shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Operator shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Operator shall make its best effort to ensure that Owner is given the same advance notice of maintenance plans and schedules as is provided to Operator's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Operator, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Operator's authorized representatives and in accordance with such reasonable operating rules as Operator shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Operator affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols attached hereto as Attachment 1. Owner shall, at Owner's sole cost and expense, obtain, install and maintain necessary communication equipment to allow Owner's Equipment to communicate with Operator's dispatching and signaling facilities the same as Operator's trains so utilize. Operator shall consult with Owner prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) has been established, and is responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.7 Operator may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by Owner provided there shall at all times be afforded Owner a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks

which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage. (Not sure if we need this).

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train supplies and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 Each Party shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in its account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.10 Except as otherwise may be provided in the Agreement, Owner shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Operator, they shall be required to pass the applicable rules examinations required by Operator of its own employees. Operator shall delegate to specified Owner's officers the conduct of such examinations in the event Owner chooses to conduct such examinations. If an Operator officer conducts such examinations of employees of Owner, Owner shall pay Operator a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, Owner shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of Owner, Operator shall qualify one or more of Owner's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of Owner engaged in or connected with Owner's operations on or along the Joint Trackage. At Owner's request, Operator shall furnish a pilot or pilots, at the expense of Owner, to assist in operating trains of Owner over the Joint Trackage. Should Operator ever require a pilot on Owner's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.11 If any employee of Owner shall neglect, refuse or fail to abide by Operator's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Operator, be prohibited by Owner from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of Owner, then upon such notice presented in writing, Operator and Owner shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to Owner's employees shall be given by Owner's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between Owner and its employees. If, in the judgment of Operator, the result of such investigation warrants, such

employee shall, upon written request by Operator, be withdrawn by Owner from service on the Joint Trackage, and Owner shall release and indemnify Operator from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of Owner to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.12 If any Equipment of Owner is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by Owner. Operator may, upon request of Owner and at Owners's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Operator while in any manner so engaged or while enroute to or returning to Operator's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of Owner and Sole Property (as hereinafter defined) of Owner. However, should Operator's employees after repairing such bad ordered Equipment for Owner move directly to perform service for Operator's benefit rather than return to Operator's terminal, then Owner's exclusive time and liability will end when Operator's employees depart for work to be performed for Operator's benefit. In the case of such repairs by Operator to freight cars in Owner's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Operator shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Operator shall prepare and submit billing directly to and collect from Owner for handling line responsibility items as determined under said Interchange Rules. Operator also shall submit billing to and collect from Owner any charges for repair to freight cars that are Owner's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of Owner shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Operator, except that employees of Owner may re-rail Owner's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of Owner shall consult with and be governed by the directions of Operator. Operator reserves the right to re-rail Equipment of Owner when, in the judgment of Operator, Operator deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of Owner shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among Owner's employees, or due to mechanical failure of Owner's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of Owner to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of Owner fails to maintain the speed required by Operator on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of Owner's trains on the Joint Trackage, Operator shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew Owner's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by Owner. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 Owner shall pay to Operator reasonable expenses incurred by Operator in the issuance of timetables made necessary solely by changes in the running time of the trains of Owner over the Joint Trackage. If changes in running time of trains of Operator or third parties, as well as those of Owner, require the issuance of timetables, then Owner shall pay to Operator that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Operator or third parties, but not those of Owner, require the issuance of timetables, then Owner shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 Owner, at Operator's request, shall be responsible for reporting to Operator the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Operator. Owner shall pay to Operator at the Office of the Treasurer of Operator, or at such other location as Operator may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement Owner is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered

and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Operator to Owner under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with Owner as the billing party and Operator as the paying party.

3.5 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 Owner and Operator agree to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Owner and Operator each covenant to the other that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. Operator further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that Operator is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by Owner carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of Owner. Owner shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Operator, immediately.

In the event of a Derailment, Operator shall assume responsibility for cleaning up any release of Hazardous Materials from Owner's Equipment in accordance with all federal, state, or local regulatory requirements. Owner may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of Owner, or on a train operated by Owner, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Operator shall assume responsibility for emergency cleanup conducted to prevent further damage. Owner shall be responsible for performing cleanup efforts thereafter. If a Hazardous Materials release caused by a derailment involving Equipment of Operator or on a train operated by Operator, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Operator shall assume responsibility for emergency cleanup conducted to prevent further damage. Operator shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of Owner, or on a train operated by Owner, Owner shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Operator, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Operator.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the

benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

- (a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;
- (b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Pilots furnished by Operator to assist in operating Equipment of Owner shall be considered the Sole Employees of Owner while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;
- (c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;
- (d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint

Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

- (e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;
- (f) Operating Employees of Operator whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;
- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or

any agreement relating to such other railroad's use of any portion of the Joint Trackage;

- (i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;
- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;
- (d) Owner shall provide written notice to User of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

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- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;
- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailling Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.
- (b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:
 - (i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.
 - (ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.
 - (iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, Owner shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from Owner's own Equipment or caused by or arising from the actions or

omissions of Owner or Owner's Employees, and then only in accordance with the other provisions hereof.

- (c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

5.7 Notwithstanding any provision to the contrary in this Agreement, liability and indemnity for Loss and/or Damage to Joint Employees shall be governed by the terms of Section 1 of that certain letter agreement between Owner and User, dated January 24, 2003 (the "Letter Agreement") for so long as the Letter Agreement remains in effect. Accordingly, for purposes of the application of Section 1 of the Letter Agreement, this Agreement shall be deemed to be an agreement identified in Exhibit A of the Letter Agreement.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6. The parties acknowledge that other procedures have been agreed to for resolution of disputes concerning

compliance with the BNSF-UP/SP Dispatching Protocols (attached hereto as Attachment 1) which procedures are set forth in Paragraph 13 thereof.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and Operator shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. Operator and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned, at the Net Liquidation Value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less the estimated cost of removal. User shall have three (3) months from the date of receipt of Owners notice to exercise its option and shall evidence the exercise of its option by giving owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt

of payment of such sum the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instrument, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to, make appropriate application to secure all necessary governmental authority for such abandonment. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 The Agreement shall be effective upon execution and shall run for an initial term of ninety-nine (99) years (Initial Term). At the end of the Initial Term, the User shall have the unilateral right to extend the Initial Term for an additional ninety-nine years (Extended Term). At the end of any Extended Term, the User shall have the right to extend the term of the Agreement for an additional term of ninety-nine (99) years. User shall have the right to terminate the Agreement upon twelve (12) months' prior notice to Owner. Liabilities created under this Agreement shall survive any such termination.

9.2 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate

over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34601**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern and Santa Fe Railway Company will agree to grant overhead trackage rights to Union Pacific Railroad Company between BNSF Milepost 0.0 (Tower 55) and BNSF Milepost 4.8 (New Connection) near Fort Worth TX, a distance of approximately 4.8 miles. The trackage rights will become effective on October 29, 2004

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:
By the Board,

Vernon A. Williams,
Secretary